

# Exhibit C

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 FEDERAL TRADE COMMISSION,  
4 PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs,

5 v.

17 CV 0124 (LLS)  
Telephone Conference

6 QUINCY BIOSCIENCE HOLDING  
7 COMPANY, INC., ET AL.,

8 Defendants.

9 -----x

New York, N.Y.  
December 14, 2020  
2:03 p.m.

10 Before:

11 HON. LOUIS L. STANTON,

12 District Judge

13 APPEARANCES VIA TELECONFERENCE

14 FEDERAL TRADE COMMISSION  
15 Attorneys for Plaintiff FTC  
16 BY: ANNETTE SOBERATS  
17 MICHELLE K. RUSK

18 NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL  
19 Attorneys for Plaintiff State of New York  
BY: KATHRYN A. MATUSCHAK

20 KELLEY DRYE & WARREN LLP  
21 Attorneys for Defendants  
BY: GEOFFREY W. CASTELLO, III  
22 AND

23 COZEN O'CONNOR  
Attorneys for Defendants  
BY: MICHAEL B. deLEEuw

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1 MS. SOBERATS: Yes. Your Honor, thank you for  
2 allowing me to respond. I just wanted to clarify that the FTC  
3 has responded in writing to defendants' interrogatory asking us  
4 to identify, for the past ten years, other actions that we have  
5 brought against dietary supplement companies that have marketed  
6 products for memory or improved cognition. And one of the  
7 outstanding requests that they have is to question us on  
8 identifying every FTC employee who has ever communicated --

9 THE COURT: I'm not going to entertain that kind of  
10 question. It falls by its own weight. There's not a judge  
11 sitting in this court who wouldn't say that isn't too broad  
12 and, of course, it's vacated as too broad.

13 MS. SOBERATS: Thank you, your Honor. I also would  
14 like to clarify, there have been multiple references to a jury  
15 trial. It is plaintiff's view that this is a case in equity  
16 and that, on that basis, it should proceed as a bench trial,  
17 your Honor.

18 THE COURT: I'm not sure I understood what you were  
19 saying. I'm actually sure I didn't understand what you were  
20 saying.

21 MS. SOBERATS: Oh, I'm sorry. I'll try to be clearer.  
22 There have been several references during this status  
23 conference to a jury, and it is plaintiff's view that the trial  
24 should be a bench trial.

25 THE COURT: Oh, but are you seeking only injunctive

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1 relief?

2 MS. SOBERATS: We are seeking injunctive relief and  
3 ancillary equitable monetary relief.

4 THE COURT: What's the equitable extra relief?

5 MS. SOBERATS: We are seeking redress in the form of  
6 consumer refunds, and if that is not feasible, your Honor, we  
7 would be seeking disgorgement.

8 THE COURT: Well, you see, there you're edging, I  
9 think, out of equity. I understand, I do, that it's a  
10 descendent of equity, but when you get down to dollars and  
11 cents and the payment from one to another, you're pretty close  
12 to a law situation. That's why I've been considering it as a  
13 jury trial throughout. I do recognize, of course, that the  
14 main relief is the injunction, but the damages in these cases  
15 is a non-trivial.

16 MS. SOBERATS: And, your Honor, courts have routinely  
17 rejected jury demands in FTC cases, and we believe that the law  
18 in the Second Circuit is clear that the type of relief we're  
19 seeking is equitable in nature.

20 And we also believe that the defendants have waived  
21 their right to a jury trial. They filed their answer over a  
22 year ago, and they did not raise a jury trial in their answer  
23 or 14 days later, as would have been required under rule 38.

24 But regardless, your Honor, we think that the law is  
25 very clear in the Second Circuit that the type of relief that

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1 plaintiffs are seeking is equitable in nature and, therefore,  
2 this case should proceed as a bench trial.

3 THE COURT: What do you think about that,  
4 Mr. Castello?

5 MR. CASTELLO: Yes, your Honor. Castello for the  
6 corporate defendants.

7 A couple of issues there, your Honor. We have, and I  
8 believe your Honor in the order that was issued on -- I'm  
9 sorry, I'm just going to grab the date here; it's document  
10 148 -- on December 3rd did reference a jury trial.

11 In our case management order and at the conference,  
12 your Honor, we did raise the issue of a jury trial. And I  
13 would also note that NYAG is seeking relief under the GBL and  
14 has demanded a relief in the form of civil penalties, and that  
15 is not an equitable matter, your Honor.

16 And I would disagree with Ms. Soberats' and the FTC's  
17 position that disgorgement or restitution are strictly  
18 equitable. I believe that, as your Honor mentioned, it teeters  
19 on the edge of law and equity. And with the amount of money at  
20 issue here, I believe that it is a proper issue to put before a  
21 juror.

22 MS. MATUSCHAK: Your Honor, this is Kate Matuschak for  
23 the Attorney General, if I could be permitted to respond?

24 THE COURT: Sure.

25 MS. MATUSCHAK: Thank you, your Honor. We agree with

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1 the FTC's position that it's quite clear that there's been a  
2 waiver of the jury trial demand here.

3 In addition, yes, we are also seeking restitution and  
4 disgorgement, both of which sound in equity, and this case is  
5 also seeking injunctive relief; so this case is really  
6 equitable in nature.

7 It is true that we are also seeking penalties under  
8 GBL section 350(d), but that portion of the relief we were  
9 seeking is ancillary to this action, which really does sound in  
10 equity.

11 So if the Court is inclined to disagree on that, we  
12 would respectfully request the opportunity to brief the Court  
13 so that we could show the Court the case law that we have that  
14 supports our position that this case is not one in which the  
15 defendants are entitled to a jury trial.

16 THE COURT: I think it's an interesting question, and  
17 I'm certainly not going to rule this afternoon from the hip. I  
18 do think you should brief it, and we should all have a chance  
19 to think about it. Frankly, I've simply formed the impression  
20 that I described to you earlier, that it was a jury case, but  
21 if it's really an issue, it's an issue that's important and  
22 should be briefed briefly and thoughtfully and to the point and  
23 decided promptly. You're free to do that.

24 The defendant says they already made a jury demand at  
25 a conference, and I think you have to take that seriously in

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1 your waiver argument. But I don't remember the date of the  
2 conference or the relationship to the pleading under rule  
3 30(a), but it's an important point and I would want to think  
4 about it.

5 It makes a big difference to the trial and may make a  
6 difference to the outcome because the jury doesn't have to  
7 explain their reasoning. My mind has been a great deal opened  
8 on it by what the FTC has said, but as you know, and is in  
9 almost every court a kind of a bias towards a jury and if  
10 there's any really serious reasons supporting it. And on that,  
11 I'm drawing a blank because this is the first time I've heard  
12 it.

13 MS. MATUSCHAK: This is Kate Matuschak from the  
14 New York Attorney General again. Thank you, your Honor. I  
15 really appreciate your willingness to consider the issue, and  
16 we would be happy to brief it for the Court.

17 THE COURT: Is there anything else we should deal with  
18 now?

19 MS. MATUSCHAK: Your Honor, this is Kate Matuschak  
20 again from the New York Attorney General's Office.

21 I just wanted to flag for the Court that we may or may  
22 not be coming to the Court with respect to an issue of fact  
23 discovery because defendants have not given us a definitive  
24 answer on whether they will give us discovery essential for us  
25 to determine our financial relief that we would request.